Supreme Court, U.S.
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No. 96-1579

IN THE

Supreme Court of the United States

October Term, 1997

JAMES BROGAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX

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JOINT APPENDIX

Relevant Excerpts from the Trial Testimony of Agent Trezza

[525] BY MS. DUNNE:

Q Agent Trezza, directing your attention to October 4, 1993, what did you do in connection with the investigation on that date?

A Agent Vincent Bufalieri of the Labor Department and I went to the residence of Mr. Brogan at 4277 Kipler Avenue in the Bronx.

Q And what occurred in connection with your visit to the premises?

A We went to the door, Mrs. Brogan answered the door and we identified ourselves as federal agents. We told her that we wanted to speak with her husband. She asked us to come into the house. Mr. Brogan, Mrs. Brogan and their daughter was -- sat down at the dining room table. We sat down with them. We identified ourselves to Mr. Brogan and said we were here in connection with an ongoing investigation of JRD [526] Management Company and other individuals.

Q What happened next?

A We asked Mr. Brogan if he was willing to answer some questions. We also advised him we were there for his cooperation in this matter and we advised him that -- I advised him that if he wanted to cooperate in this matter once he got to the US Attorney's office, he would need an attorney to do so.

We advised Mr. Brogan that if he couldn't afford an

attorney, one could be appointed for him. And I also advised him if he was going to secure an attorney of his own choosing, he would be best doing that as opposed to getting one provided by the Union.

Q Did you ask him any questions?

A Yes. We asked him if he would talk to us and he said, fine, he'd answer some questions. He said he was a -- in response to our questions, he said he was a 32E member since 1951 and that he was a union delegate in 1987 and 1988.

We asked him if he, as a union delegate, if he ever received any money or gifts from JRD.

And he responded no.

At that point we advised Mr. Brogan that we had executed a search warrant on the premises of JRD and that we found records that indicated that, in fact, he did receive money from JRD. And we advised him that lying to a federal agent [527] in the conducting of an investigation is a crime.

Q Did he make any further statements?

A He responded after that that I ain't telling him --

MR. HOLTZMAN: Objection, your Honor.

THE COURT: Sustained.

MR. HOLTZMAN: Objection. May we approach the bench?

THE COURT: Strike it out. Members of the jury, disregard the answer.

* * *

[532] BY MS. DUNNE:

Q What happened next?

THE COURT: No, no, no. Simple questions so we

don't get anything like that again.

MS. DUNNE: Okay.

Q Did you ask any further questions or --

THE COURT: Nothing further. No. Nothing more than that.

A Agent Bufalieri served Mr. Brogan with a Grand Jury subpoena requesting photographs, fingerprints, handwriting and voice exemplars. Upon leaving I advised Mr. Brogan again if he was to seek counsel, he should consider securing his own attorney and his daughter, Mr. Brogan's daughter, said that either a friend of the family or --

Q Were there any further statements by Mr. Brogan?

MR. HOLTZMAN: Objection.

THE COURT: I'll sustain any objection to what the daughter said.

Q Were there any further statements by Mr. Brogan?

MR. HOLTZMAN: Objection, your Honor.

[533] THE COURT: Sustained.

MS. DUNNE: Okay. No further statements.

BY MS. DUNNE:

Q And was your interview then complete?

A Yes, it was.

MS. DUNNE: No further questions.

CROSS EXAMINATION

BY MR. HOLTZMAN:

Q Mr. Trezza, what time was it you arrived at Mr. Brogan's residence?

A Approximately 6:00.

Q And before you arrived at his residence, did you know whether or nor Mr. Brogan had a telephone, sir?

A I'm sorry, what was that?
Q I said: Before you went to his residence, did you know whether or not Mr. Brogan had a telephone?
A I'm not sure.
Q Did you know whether or not Mr. Bufalieri knew if Mr. Brogan had a telephone?
THE COURT: I don't think he can be examined as to Bufalieri's mind.
MR. HOLTZMAN: Perhaps Bufalieri told him he knew.
THE COURT: You can ask him that.
A Not that I'm aware of, no.
Q Would it be fair to say neither you or Bufalieri made [534] any effort to reach Mr. Brogan by telephone to tell him you were coming to his house, correct?
A That's correct.
Q You didn't write him any letter either telling him that you were expecting to arrive at his house, correct?
A That's correct.
Q So you arrived on his doorstep completely unannounced, is that fair?
A That's correct.
Q And you intended that he shouldn't know before your arrival that you would arrive; didn't you?
A Could you repeat that, please?
Q Yes. Before you arrived there, it was your intention to conceal to Mr. Brogan that you were going to arrive there, you did not make any attempt to communicate to him that you were coming, did you?
MS. DUNNE: Objection.
THE COURT: Reframe the question.
Q Did you make any effort prior to your arrival at Mr. Brogan's residence to let him know to expect you?

A That's not --
Q I asked you a question, sir, can you tell me yes or no?
THE COURT: Please don't yell. I'm the only one here that can do that and I try not to do it.
MR. HOLTZMAN: Fine, your Honor.
[535] Q The answer was no; is that correct?
A That's correct.
Q Would it be fair to say the reason you didn't do so was for the element of surprise, correct?
A Partly.
Q Now you testified --
THE COURT: Whatever he testified, we heard, don't give us that.
MR. HOLTZMAN: I'm sorry, your Honor.
Q Before your departure, you handed Mr. Brogan a subpoena requiring him to appear before the Grand Jury and provide handwriting exemplars, voice exemplars, a photograph of himself and fingerprints, correct?
A Yes.
Q And you know that he complied with that, correct?
A I don't personally know that, no.
Q Have you ever heard he didn't comply with it, sir?
A No.
MR. HOLTZMAN: Just give me another moment, sir. (Pause.)
MR. HOLTZMAN: I have no other questions, sir.
THE COURT: Anything else? Thank you very much, please step down.
(Witness excused.)